

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of)	
)	
Sandhill Plastics, Inc.)	
119 W. 19 th Street)	
Kearney, Nebraska 68847)	Docket. No. CWA-07-2003-0030
)	
Respondent)	FINDINGS OF VIOLATION,
)	ORDER FOR COMPLIANCE
Proceedings under Section 309(a)(3))	
of the Clean Water Act,)	
33 U.S.C. § 1319(a)(3))	
_____)	

I. PRELIMINARY STATEMENT

1. The following FINDINGS OF VIOLATION are made and ORDER FOR COMPLIANCE is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA"), by Section 309(a)(3) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a)(3), as delegated by the Administrator to the Regional Administrator, EPA Region VII, and further delegated to the Director, Water, Wetlands and Pesticides Division, EPA, Region VII.
2. The Respondent is Sandhill Plastics, Inc.
3. The City of Kearney, Nebraska, owns and operates a publicly owned treatment works (POTW) that treats municipal and industrial wastewater (herein "City" or the "City of Kearney").

II. STATUTORY AND REGULATORY BACKGROUND

4. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, Sections 307 and 402 of the CWA, 33 U.S.C. §§ 1317 and 1342. Section 402 provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to that Section. Section 307 of the CWA, in pertinent part, authorizes the EPA to establish pretreatment standards for introduction of pollutants into publicly owned treatment works.

5. Pursuant to Section 307(b) of the CWA, 33 U.S.C. § 1317(b), EPA promulgated regulations at 40 C.F.R. Part 403, entitled the General Pretreatment Regulations. These regulations address the introduction of pollutants into publicly owned treatment works which are determined not to be amenable to treatment by such treatment works or which could interfere with the operation of such treatment works.

6. The General Pretreatment Regulations at 40 C.F.R. § 403.3(i) and (n) set forth definitions for interference and pass through, respectively. Specifically:

- a. "Interference" is defined, in pertinent part, as a discharge of pollutants, from Industrial Users which, alone or in conjunction with other sources, inhibits or disrupts the treatment processes or operations of a Publicly Owned Treatment Works ("POTW") and which is the cause of a violation of a POTW's NPDES permit; and
- b. "Pass through" is defined, in pertinent part, as a discharge of pollutants from Industrial Users which exits a POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with other sources, causes a violation of any requirement of a POTW's NPDES permit.

7. The General Pretreatment Regulations at 40 C.F.R. § 403.3(h) defines an "industrial user" or "user" as a source of indirect discharge.

8. The General Pretreatment Regulations at 40 C.F.R. § 403.3(g) defines indirect discharge (or discharge) to mean the introduction of pollutants into a POTW from a non-domestic source regulated under section 307(b), (c) or (d) of the Act.

9. Pursuant to 40 C.F.R. § 403.5(a), users are prohibited from introducing pollutants to a POTW which result in the "pass through" of pollutants through the POTW, or "interference" with the operations of the POTW.

10. The Nebraska Department of Environmental Quality ("NDEQ") is the state agency within the State of Nebraska with the delegated authority to administer the federal NPDES and Pretreatment Programs pursuant to Section 402 of the CWA, its implementing regulations, and Memorandum of Understanding between EPA and NDEQ, dated September 7, 1984. The EPA maintains concurrent enforcement authority with authorized state NPDES and Pretreatment programs for violations of NPDES permits and/or violations of the Pretreatment program requirements.

III. FINDINGS OF FACT

11. Respondent is incorporated in the State of Nebraska as a corporation.
12. Respondent does business as Sandhill Plastics, Inc.
13. Respondent is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
14. At all times relevant, Respondent was, and still is, the owner and/or operator of a manufacturing facility located at 119 W. 19th Street, Kearney, Nebraska 68847, (the "Facility").
15. The City of Kearney, Nebraska (hereafter "City") owns and operates a POTW in Buffalo County, Nebraska. The City's POTW includes a wastewater treatment plant and sewage collection system, which receives wastewater from various domestic and non-domestic sources.
16. The City's POTW is a "point source" that "discharges pollutants" into the North Channel of the Platte River, as these terms are defined by Section 502(14, 12) of the CWA, respectively, 33 U.S.C. § 1362(14, 12).
17. North Channel of the Platte River is a tributary of the Missouri River, which is a tributary of the Mississippi River.
18. North Channel of the Platte River is considered "navigable waters" of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
19. On or about April 17, 2002, NPDES Permit No. NE0052647 (the "Permit") was issued to the City by NDEQ pursuant to the authority of federal and state law and regulations.
20. The Permit contains limitations for discharges of effluent from the City's POTW to the North Channel of the Platte River.
21. According to its terms, the date of expiration of the Permit is June 30, 2007.
22. The Permit prohibits discharge of floating solids or visible foam other than in trace amounts. (Part IV A. 2. of NPDES Permit No. NE0052647).
23. The Permit requires the city of Kearney, Nebraska to maintain in good working order and operate as efficiently as possible, any facilities or systems of control installed by the city of Kearney, Nebraska, in order to achieve compliance with the terms and conditions of the NPDES permit... (Appendix A, E.1. of NPDES permit No. NE0052647)

24. Respondent discharges process wastewater from the Facility into the City's POTW, and therefore is an "industrial user", as defined by 40 C.F.R. § 403.3(h).

25. The POTW's process wastewater is a "pollutant" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

26. Respondent is subject to the General Pretreatment Regulations at 40 C.F.R. Part 403.

27. On June 4 and June 6, 2002, EPA performed a site visit at the City's POTW. The inspector observed, photographed and collected samples of plastic flakes said to be discharged by Sandhill Plastics, Inc., an injection molding industrial user connected to the Kearney POTW.

IV. FINDINGS OF VIOLATION

Paragraphs 11 through 27 above are incorporated herein by reference.

28. The POTW's wastewater discharges contained floating solids (plastic flakes).

29. Discharge of floating solids (plastic flakes) is a violation of NPDES permit No. NE0052647 and is the result of pass through from Respondent's indirect discharges to the city of Kearney, Nebraska POTW. Pass through is a violation of 40 CFR § 403.5(a).

30. On or about June 4, 2002, a U.S. EPA Region VII inspector observed the Kearney, Nebraska wastewater treatment plant. It was observed that a number of plastic flakes were floating on the clarifier surfaces. The plastic flakes were observed also to be combining with oil and grease scum, a conventional pollutant, and clogging the scum removal troughs.

31. Proper operation and maintenance of facilities to achieve compliance with the city of Kearney's NPDES permit is required. Respondent's indirect discharge of floating solids (plastic flakes) is interfering with proper operation and maintenance by causing clogging of the scum removal troughs. This is a violation of Appendix A, E.1 of NPDES permit No. 0052647. Interference is a violation of 40 CFR § 403.5(a).

32. On or about June 6, 2002 a U.S. EPA Region VII inspector returned to photograph and collect a sample of the plastic flakes and the affect they have on the POTW operation.

33. Workers at the plant identified the plastic flakes as those discharged from Sandhill Plastics, Inc.

V. ORDER FOR COMPLIANCE

Based on the Findings of Violation set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED to take the following actions to eliminate pass through caused by its discharges of pollutants to the City of Kearney's POTW:

Discharges

34. Effective immediately, Respondent shall not discharge process or nonprocess wastewater to the POTW from its facility that contains the following:

Floating Solids (plastic flakes)

35. Respondent shall, within 30 days of receipt of this Order submit a management plan that identifies all sources of plastic material and their pathway(s) of entry to the City's wastewater collection system. Included shall be a discussion on how each of these pathways was controlled so that no plastic material is discharged.

Submissions

36. All documents required to be submitted to EPA by this Order shall be submitted by mail to Mr. Paul Marshall, Pretreatment Coordinator, at the following address:

United States Environmental Protection Agency-Region VII
NPDES and Facilities Management Branch
901 N. 5th Street
Kansas City, Kansas 66101

37. A copy of documents required to be submitted to EPA shall be submitted by mail to:

Pat Rice, Assistant Director
Water Quality Division
Nebraska Department of Environmental Quality
Suite 400, The Atrium
1200 "N" Street
P.O. Box 98922
Lincoln, Nebraska 68509-8922

38. All submissions made by Respondent to EPA pursuant to the requirements of this Order shall contain the following certification that is signed by a responsible officer or plant manager of Respondent's facility:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing submissions of false information."

VI. General Provisions

Effect of Compliance with the terms of this Order for Compliance

39. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or seeking additional injunctive relief, pursuant to Section 309 of the CWA, 42 U.S.C. § 1319.

40. This Order shall not constitute a waiver or a modification of any requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. The EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d) or (g) of the Act, 33 U.S.C. § 1319(b), (c), (d), or (g), for any violation cited in this Order. Issuance of this Order shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for any violation whatsoever.

Access and Requests for Information

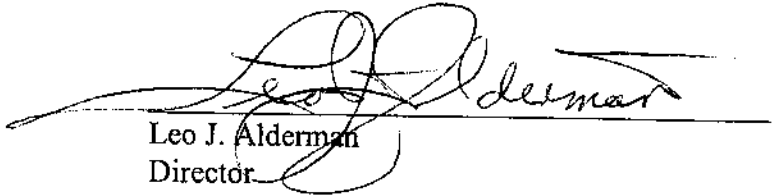
41. Nothing in this Order shall limit EPA's right to obtain access to and/or to inspect Respondent's facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

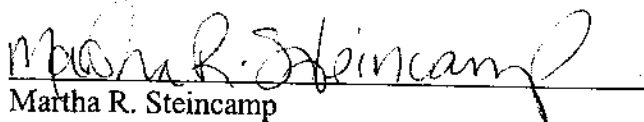
42. If any provision or authority of this Order or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Effective Date

43. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of an executed copy of the Order.

A handwritten signature in black ink, appearing to read "Leo J. Alderman", is written over a horizontal line.

Leo J. Alderman
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency, Region VII

A handwritten signature in black ink, appearing to read "Martha R. Steincamp", is written over a horizontal line.

Martha R. Steincamp
Regional Counsel
U.S. Environmental Protection Agency, Region VII

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I hand delivered the original and one true copy of this Findings of Violation and Order for Compliance to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true correct copy of the same to the following:

The Honorable Pete Kotsiopulos
Mayor, City of Kearney
P.O. Box 1180
Kearney, Nebraska 68848

Rod Wiederspan
Public Works Director/City Engineer
City of Kearney
P.O. Box 1180
Kearney, Nebraska 68848

Patrick W. Rice
Assistant Director
Nebraska Department of Environmental Quality
Suite 400, The Atrium
1200 "N" Street
P.O. Box 98922
Lincoln, Nebraska 68509-8922

James Weber
President and Registered Agent
Sandhill Plastics, Inc.
119 West 19th Street
Kearney, Nebraska 68847

12/11/02
Date

Amy Gonzalez